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CPCU SOCIETY
INSURING YOUR SUCCESS

Editor's Corner: It's a New Year—"All Over Again"

by Chris O'Donnell, CPCU

As we sort through the accumulation of goodies and clutter of the holiday season and await our credit card bills, we should reflect upon the year past and this coming year. Hopefully, the burden of the recently past year-end insurance renewal cycle did not interfere too much with the spirit of the holiday season.

Too often, we in the insurance business become too tied up in the last-minute negotiations for those very important December 31 or January 1 policy anniversaries. Hard market or soft market, those negotiations tend to be delayed, for whatever reason, until the last possible moment, pressing right up against the major year-end holidays—Christmas, Hanukkah, New Year's, and so forth. Hard market or soft market, underwriters are loathe to be the first ones in with their renewal opinion, necessitating the last-minute stress and anxiety of those renewals.

That stress and anxiety are further complicated by those very holidays. Perhaps that's a blessing in disguise. While the rest of our society worries about getting the very right gifts, we worry about our clients' and prospects' needs. After all, the shopping bargains are best near the end anyway.

This year, it did not seem that the insurance industry provided any great bargains for its customers, even near the close of the year 2002. In fact, it appears that our industry provided lumps of coal in the stockings of its customers again this holiday season.

At the close of three solid hard-market years, it appears there is no end in sight. Those in the know seem to believe that this hard market could continue for another three or four years . . . certainly throughout the year 2003.

Aside from some new capital competition at high-end, high-premium accounts, there seems to be very little competition for the majority of our clientele. Of course, there are those niches of specialty association-driven programs or other program business; however, the competition seems to be within very narrow bands, with some classes seeing no competition whatsoever.

As we proceed into 2003 with great uncertainty in our society and the world, our industry becomes more and more conservative. Hopefully, our pendulum will not swing too far in the hardening direction. Please keep in mind that it swung too far in the soft direction during the 1990s.

Clearly, some balance in our industry's underwriting structure would be a great benefit to its customers, as well as its distribution chain—us, the agents and brokers. Whereas, in the past, the soft markets seem to be prolonged, consistent price reductions over a period of years, our hard markets tended to be disruptively large and short in duration.

This current hard market seems to be a series of ever-increasing disruptions rolling from one class of insured to another, primary to excess, direct to reinsurance. Even a system of rather predictable, consistent increases would be better than the large-scale disruptions that we have been experiencing and seemingly will continue to experience into the new year and, perhaps, beyond.

Again, hopefully, once we get past the problems on the world scene, i.e. terrorism, Iraq, North Korea, Venezuela, and so forth, we can build some consistency and stability into our industry. If we merely continue to harden up past the point of tolerable pain for our customers, we will lose our relationship with many of them forever. Likewise, if we abruptly do an about-face and let the market soften up to the extent that it did in the 1990s, we will set ourselves up to fail again at some point in the future.

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Perhaps the experience of this unique set of circumstances, which led to the current insurance marketplace, will chasten our industry's executives. They need to keep in mind the lessons learned about "cash flow underwriting." That practice lowered the cost of insurance to consumers below its costs to carriers but generated loads of cash for investment gambling in the equity markets.

We know all too well what happened to that money. The investment "bubble" burst; however, the liability and expense "bubble" has not.

Insurance 101 tells us we should not gamble in our business. It's an uninsurable risk. That's the business of Las Vegas, Atlantic City, and the Native Americans in Niagara Falls and other tribal casinos. With some luck and foresight we may yet see a more sensible long-term strategy of prudent underwriting and a sustainable and affordable supply of insurance for its customers.

I remain an optimist! ■

Insurance Agents' E&O Exposure in the Hard Market

by David W. Henry, Esq., and James T. Harrison Jr., Esq.

Editor's note:
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Although much has been written about the hard market and the changes in capacity, pricing, limits, and availability of coverage, the hard market has another foreseeable consequence: an increase in E&O exposure for agents and brokers. An increase in the frequency of E&O claims was observed following hard markets in the '80s. That there would again be an increase in E&O exposure in a hard market is understandable when one considers the variety of situations that give rise to claims. To suggest as we do in this article that there could be more claims does not mean to suggest the claims described are evidence of negligence. Nothing in this article is intended to raise the standard of care, but only to highlight hypothetical claims scenarios.

Some claims will arise due to the difference between available coverages and consumer expectations. As a rule of law, most jurisdictions recognize that the insured is entitled to expect the policy will renew on the same terms and conditions unless the insured is informed otherwise. This rule makes sense in ordinary times (if ordinary is possible). The "renew on same terms" presumption is fine as a contract principle. The rule should not be applied to agents as a basis for imposing liability, and in a hard market this common-law principle is severely tested. In a soft market, high limits, low deductibles, and inexpensive coverage enhancements are available. Coverages renew with ease, and sometimes at lower premium for the same or even broader coverage. Endorsements broadening coverage are offered, recommended, and affordable. In a soft market (with capacity), general liability carriers, for example, will offer employment practices liability endorsements. Over the past many years the insureds have built up expectations that can no longer be met. Many insureds have never felt the sting of the hard market and have never experienced the "it costs more and covers less" renewal. Litigation results from the difference between expectation and reality.

As policies are being renewed, if at all, at higher premiums with fewer coverage extensions or with new exclusions, insureds will argue it is incumbent upon the agent to explain the coverage changes that may occur at renewal or when switching carriers. The extent of the agent's duty to explain coverage changes will be the source of much litigation. Agents rightfully argue that the policy is a contract, that they do not set the terms, and that absent a special relationship, there should be no freestanding "duty to warn." Plaintiffs argue that key coverage changes should be explained as part of the duty of "reasonable care" or the duty to give advice and counsel as part of the service agents provide.

Agents writing professional liability risks will see even good or preferred accounts paying huge premiums for lower limits and with defense costs included within the aggregate limit. Physicians may no longer have coverage for certain procedures that were once insurable. Limits needed for admitting privileges at hospitals will be difficult to obtain in some cases. The agent that fails to timely renew at required limits or who fails to warn the physician could face a claim by a physician who claims that

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his or her practice has been jeopardized.

Contractors and subs will find it harder to procure coverage and when they do they are met with exclusions for things such as mold, EFIS, and subsidence. Again, agents face exposure if they fail to communicate renewal problems. If the contractor requires a one million dollar limit for a project but only 500K is available, the contractor may be a non-compliant bidder or ineligible for the work. Transportation risks could see changes in radius of operation. Aviation risks could see more exclusions for travel outside the continental United States, making some trips that were once permitted no longer insurable. Certain aircraft may be more difficult to insure. In general aviation for example, some exposure beyond ordinary pleasure and business use may be excluded.

Business interruption coverage will be more expensive and agents may not offer that coverage to keep the premium low. This could result in uninsured losses. Umbrella coverages may no longer be available. Gaps in limits between first layer and required excess policies may arise. Contractually assumed liability coverage extensions will not be available to meet contractual indemnity obligations. There are countless E&O scenarios in a hard market.

In the hard market, retail agents have begun making greater use of the wholesale market. This is a potential source of E&O claims. Many wholesalers (from MGM to surplus lines brokers) use non-ACORD applications to bind coverage. Many do not use current ISO forms and use more exclusionary endorsements than the admitted market. Sometimes the agents will not know what they have bound until they see the policy. Policy delivery has always been a problem and that problem continues to be in the hard market. Mistakes that arise during the binder period are problematic to defend because the insured has not seen the policy and therefore key defenses to the E&O claim are not available. One cannot argue that the insured should have read the policy and contacted the agent to request a change if the policy is not delivered.

Retailers should seek out established wholesalers and look for MGAs that hold designations or "certifications" from the AAMGA University or affiliations with NAPSLO. In a difficult and uncertain market, certificates or designations in the wholesale arena offer some indication that the wholesaler is established, and is committed to E&O prevention, and to the training and education of its employees. Indiscriminate use of wholesalers also creates the risk of insolvency. The retailer relies on the wholesaler to screen the markets, but the wholesaler is also not immune and may be reduced to using financially suspect or unfamiliar markets.

Placing business in the wholesale market carries with it some increased liability exposure because of the agent's unfamiliarity with the wholesaler and such issues as their minimum earned premium rates, manuscript forms, strength of represented carriers, and the use of unique application and coverage forms. With wholesaler, there is another level of communication, and thus a greater risk for delay and misunderstanding between carrier, wholesaler, agent, and insured.

Agents will need to work hard to ensure that key coverage changes are communicated to the insured at the time of the proposal if possible, and certainly once coverage is bound. As agents venture into unfamiliar waters in the hard market if only to secure their clients something within a fathom of the price they have come to expect, the agent and insured ran the risk of traveling in unfamiliar waters. Some could end up grounded on the shoals of carrier insolvency or caught in the strait of a narrow coverage form. As part of their underwriting, agent E&O carriers are well-advised to identify insureds that have increased their use of wholesalers, and as part of their risk management should offer E&O prevention courses aimed at addressing the increased risks associated with the hard market and use of unfamiliar wholesalers. ■

Tips for Doing Business in a Hard Market

Editor's note: *Thanks to the CPCU Society's New Hampshire Chapter I-Day Committee for providing this information.*

Plan, Prepare, Prioritize, and be Personal

Do

- Be prepared.
- Be more prepared.
- Know the risk.
- Know the exposures.
- Know the coverages.
- Have the facts straight.
- Know the claim history.
- Anticipate problem areas.
- Offer solutions.
- Know your options.
- Strategize.
- Prepare client for market conditions.
- Know the carrier's appetite for risk.
- Deal first with a carrier with whom you have leverage.
- Empathize with the underwriter.
- Put yourself in the underwriter's position.
- Be honest with both underwriter and client.

Don't

- "Shot-Gun" submissions.
- Waste anyone's time by being unprepared.
- Knowingly omit important details.
- Assume the underwriter understands the coverages.
- Submit classes of business to markets that don't want them.
- Underestimate the importance of "leverage."
- Ignore excess/surplus markets for the tough-to-place coverages.

Have You Considered

- Seek out a mentor who has been through hard markets.
- Go back to school to hone your skills.
- Be more visible in the insurance community.
- Realize how important networking can be.
- Ask for constructive feedback.
- Resurrect old unused skills that helped past successes.

Listen, Learn, Lay It Out, and Look

What's New at the Institutes

by Chuck Hussey, CPCU, AAI, ARM

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Okay, so it's really not that new, having been announced in March 2002, but the revised CPCU curriculum may still be somewhat confusing to some. I would like to devote this installment of "What's New" to a review of a few of the changes in CPCU.

The CPCU curriculum has been changed only three times since it was introduced in 1942. Originally a five-course business program, the curriculum was revised to 10 courses of similar content in 1979. In 1992, Part 10 material was integrated into other CPCU courses and replaced with a Related Studies option. Now in 2002, the curriculum has seen its most comprehensive revision as the required number of courses has been reduced from 10 to eight, two business courses (management and economics) have been deleted, two new financial services courses have been added, and a new choice of a personal or commercial concentration has been introduced.

These changes, reviewed in detail by both the Institutes and the CPCU Society before receiving approval, make the CPCU curriculum much more relevant to the candidates' jobs and more suitable to their busy working lives. Every candidate will now take five required foundation courses. From there, they have the opportunity to select either a personal or commercial concentration for a total of eight courses. By having the choice of concentration, the candidate can select two courses in the preferred concentration while still being exposed to the other industry segment through one comprehensive survey course.

Foundation Courses

CPCU 510	Foundations of Risk Management, Insurance, and Professionalism
CPCU 520	Insurance Operations and Regulation
CPCU 530	The Legal Environment of Risk Management and Insurance
CPCU 540	Business and Financial Analysis for Risk Management and Insurance Professionals
CPCU 560	Financial Services Institutions

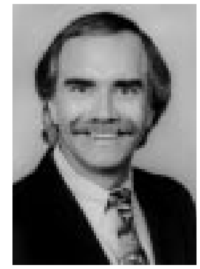
Commercial Concentration

CPCU 551	Commercial Property Risk Management and Insurance
CPCU 552	Commercial Liability Risk Management and Insurance
CPCU 553	Survey of Personal Risk Management, Insurance, and Financial Planning

Personal Concentration

CPCU 555	Personal Risk Management and Property-Liability Insurance
CPCU 556	Personal Financial Planning
CPCU 557	Survey of Commercial Risk Management and Insurance

The two new courses help candidates learn about the recent convergence of insurance with financial services. One of these new courses, Financial Services Institutions, is a foundation course. It discusses banks, the stock market, financing alternatives, and risk associated with financial institutions. The other new course, Personal Financial Planning, is part of the personal lines concentration. It discusses life and health insurance, personal investing alternatives, and retirement and estate planning. Both of these courses are extremely relevant to today's insurance marketplace and will be very valuable to a candidate's future.



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Some of the confusion that resulted from the changes in the curriculum arose from active candidates being uncertain about how their previous achievements translated into the new program. The grid below shows how the "old" parts 1 through 9 convert into the "new" program. Although this may tentatively answer the question "What do I have credit for under the new rules?," a candidate may want to be really sure and check a new feature on our web site. He or she should go to **www.aicpcu.org** and click on Web Student Advisor on the Home Page. After logging on using his or her social security number and birth date, the candidate will see two tables that convert the already passed courses into the new curriculum. This leaves no doubt as to which courses are completed and which still need to be passed to earn the CPCU designation.

There you have it. The new CPCU curriculum is more relevant to the insurance market, more suited to the candidate's job function, and a little shorter with eight exams instead of 10. There are more items of interest on the new program, such as waivers for college work and other designations, plus credit for CPCU work toward an M.B.A. degree. The full story is too long to present here, so we invite you to visit our web site and see all the information about the changes in the CPCU program. ■

Existing Credit CPCU Exams Passed	Earns Credit for New CPCU
CPCU 1	510 Foundations of Risk Management, Insurance, and Professionalism
CPCU 2	553 Survey of Personal Risk Management, Insurance, and Financial Planning
	555 Personal Risk Management and Property-Liability Insurance
CPCU 3	551 Commercial Property Risk Management and Insurance
CPCU 4	552 Commercial Liability Risk Management and Insurance
CPCU 5	520 Insurance Operations and Regulation
CPCU 6	530 The Legal Environment of Risk Management and Insurance
CPCU 7	560 Financial Services Institutions
CPCU 8	540 Business and Financial Analysis for Risk Management and Insurance Professionals
CPCU 9	560 Financial Services Institutions

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May 8-9, 2003
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- Not one, but two keynote Leadership Luncheon speakers!

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Attend the Spring 2003 CPCU Society NLI to develop the skills you need to distinguish yourself from the rest and succeed in today's competitive marketplace! To learn more, log on to the CPCU Society web site, www.cpcusociety.org, or refer to your NLI brochure included in the February/March 2003 issue of the *CPCU News*. For more information, please contact the Member Resource Center at (800) 932-CPCU, option 4, or at membercenter@cpcusociety.org.

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